Supreme Court, U. S.
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No. 95-2079

In The

Supreme Court of the United States

October Term, 1995

BRIDGET ANN HAAS, by and through her father and legal guardian, William E. Haas,

Petitioners,

vs.

RICKY WYATT and CHARLES FETNER (as acting Commissioner of Mental Health for the State of Alabama), et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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23 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether certiorari is appropriate to review a case in which the appellate court appeared to use precisely the standard of review petitioner claims is appropriate.

2. Whether certiorari is appropriate to review a case in which the result below would be the same whether the appellate court employed either an abuse of discretion or *de novo* standard of review.

3. Whether certiorari is appropriate when there was no substantial departure below from the accepted and usual course of judicial proceedings.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS AND JUDGMENTS DELIVERED BELOW 1

STATEMENT OF JURISDICTION 2

STATEMENT OF THE CASE 2

A. Course of Proceedings and Disposition of the Case Below 2

B. Correction of Misstatement of Law in the Petition 8

ARGUMENTS FOR DENYING THE WRIT 8

I. This Court should deny certiorari because it appears that the Eleventh Circuit Court of Appeals used a *de novo* standard in reviewing petitioner's appeal -- precisely the standard petitioner asserts is appropriate. 8

II. This Court should deny certiorari because under either an abuse of discretion analysis or a *de novo* standard of review, the result in petitioner's case would be the same. 10

Table of Contents (continued)

Page

III. Certiorari is inappropriate in this case because there was no "substantial departure from the accepted and usual course of judicial proceedings" below. 13

CONCLUSION 15

TABLE OF AUTHORITIES

Cases *Page*

Athens Lumber Co., Inc. v. Federal Election Commission, 690 F.2d 1364 (11th Cir. 1982) 13

Bush v. Viterna, 740 F.2d 350 (5th Cir. 1984) ... 10, 11, 13

California v. Tahoe Regional Planning Agency, 792 F.2d 779 (9th Cir. 1986) 8

Federal Savings and Loan v. Falls Chase Special Taxing District, 983 F.2d 211 (11th Cir. 1993) 9

Graves v. Walton County Board of Education, 686 F.2d 1135 (5th Cir. 1982) 14

Halderman v. Pennhurst State School & Hospital, 612 F.2d 131 (3d Cir 1979) 13

Lelsz v. Kavanaugh, 98 F.R.D. 11 (E.D. Tx. 1982), *appeal dismissed on other grounds*, 710 F.2d 1040 (5th Cir. 1983) 13

Lockett v. Board of Education, 976 F.2d 648 (11th Cir. 1992) 14

Meek v. Metropolitan Dade County, Fla., 985 F.2d 1471 (11th Cir. 1993) 9

Trbovich v. United Mine Workers, 404 U.S. 528 (1972) .. 10

Wyatt v. Hanan, No. 3195-N (M.D. Ala. Feb. 15, 1996) ..... *passim*

Table of Authorities (continued)

Page

Wyatt v. Hanan, No. 95-6013 (11th Cir. Jan. 31, 1996) .. 7

Wyatt v. Hanan, No. 95-6013 (11th Cir. Mar. 28, 1996) . 7

Wyatt v. Poundstone, 892 F. Supp. 1410 (M.D. Ala. 1995), Nos. 95-6637 & 95-6875 (11th Cir. argued Dec. 7, 1995). 6

Wyatt v. Poundstone, No. 3195-N (M.D. Ala. Oct. 3, 1995) 11, 13

Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971) ... 2

Wyatt v. Stickney, 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd in relevant part, remanded in part, decision reserved in part* 503 F.2d 1305 (5th Cir. 1974). 3

Wyatt v. Stickney, 344 F. Supp. 387 (M.D.Ala. 1972), *aff'd in relevant part, remanded in part, decision reserved in part*, 503 F.2d 1305 (5th Cir. 1974). 2, 3

Wyatt v. Wallis, No. 3195-N (M.D. Ala. Sept. 22, 1986) . 4

Statutes

28 U.S.C. § 1254(1) 2

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 ..... 4, 5

Table of Authorities (continued)

Page

Rules

11th Cir. R. 36-2 7

Fed. R. Civ. P. 24(a)(2) 5, 8, 13

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Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

Respondents request that the Court deny the petition for writ of certiorari seeking review of an opinion of the Eleventh Circuit Court of Appeals.

OPINIONS AND JUDGMENTS DELIVERED BELOW

The Middle District of Alabama denied petitioner's motion to intervene as of right in this matter in February

1995. *Wyatt v. Hanan*, No. 3195-N (M.D. Ala. Feb. 15, 1995). Petitioner appealed to the Eleventh Circuit Court of Appeals, which dismissed petitioner's appeal in January 1996. *Wyatt v. Hanan*, No. 95-6013 (11th Cir. Jan. 31, 1996) (per curiam) (unpublished). Petitioner's request for rehearing or rehearing *en banc* was denied by the Eleventh Circuit in March 1996. *Wyatt v. Hanan*, No. 95-6013 (11th Cir. Mar. 28, 1996).

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below

On October 23, 1970, this lawsuit was filed on behalf of people with mental illness committed to Bryce Hospital in Tuscaloosa, Alabama.[1] Approximately one year later, the case expanded to include the interests of people with mental retardation, when plaintiffs, who are respondents before this Court, informed the district court of the grossly inadequate conditions and treatment provided to people with mental retardation at the Partlow Developmental Center (then called the Partlow State School and Hospital).[2] Plaintiffs sought a ruling that these facilities

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[1] *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971).

[2] *Wyatt v. Stickney*, 344 F. Supp. 387, 391 & n.7 (M.D.Ala. 1972) (discussing evidence of "hazardous and deplorable inadequacies in [Partlow's] operation."), *aff'd in relevant part, remanded in part, decision reserved in part*, 503 F.2d 1305 (5th Cir. 1974).

failed to satisfy minimum constitutional standards with respect to the care and treatment of mentally retarded and mentally ill individuals.[3]

In 1972, after hearing "[e]vidence ... on the adequacy of conditions currently existing at Partlow as well as on the standards requisite for a constitutionally adequate minimum habilitation program,"[4] the district court addressed the needs of individuals with mental retardation when it directed defendants, the Alabama Department of Mental Health and Mental Retardation and certain institutional administrators, to comply with standards – known as the "*Wyatt* standards" -- designed to ensure constitutionally adequate care.[5] In 1975, the plaintiff class was expanded to include persons in all state-run mental health and mental retardation facilities in Alabama. R2-289-1.[6]

In 1979 and 1983, the parties litigated whether defendants had complied with the *Wyatt* standards. The 1983 litigation ended in 1986, when defendants agreed to a

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[3] *Id.* at 398; *Wyatt v. Stickney*, 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd in relevant part, remanded in part, decision reserved in part* 503 F.2d 1305 (5th Cir. 1974).

[4] *Wyatt v. Stickney*, 344 F.Supp. 387 at 390.

[5] *Id.* at 395-407. On the same day, the court issued a separate Order finding that Bryce Hospital was inhumane, and requiring Defendants to comply with a separate set of standards designed to ensure adequate care for individuals with mental illness. *Wyatt v. Stickney*, 344 F. Supp. 373 at 379.

[6] Orders and other documents in the appellate court record in this matter are cited with the letter R, followed by the volume number, document number and page number(s) on which the material cited can be located.

Consent Decree that reaffirmed the standards and imposed other obligations, but also made concessions to defendants, including the termination of a receivership and the dissolution of a court monitor's office. *Wyatt v. Wallis*, No. 3195-N (M. D. Ala. Sept. 22, 1986), A.133, R6-1101-1.[7]

In 1991, Defendants filed a motion requesting that the district court find them in compliance with the 1986 Consent Decree, and terminate the litigation. R6-1167-1. In 1993, Plaintiffs claimed that defendants had violated the 1986 Consent Decree, and asked the district court to enforce the Decree and to grant additional relief. R9-1564-1. Also in 1993, Plaintiffs amended their complaint to include claims under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213. R9-1563-1; R9-1573-1.

William Edward Haas, petitioner in this Court, moved in the district court to intervene on behalf of his daughter Bridget in September 1994, approximately four years after Ms. Haas moved to the Partlow Developmental Center. A.275, R.11-131-1; R12-197-1. The district court orally denied petitioner's motion to intervene in November 1994 and issued an order denying the motion in February 1995. *Wyatt v. Hanan*, No. 3195-N (M.D. Ala. Feb. 15, 1996), A.10, R16-611-1.

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[7] In this brief, respondents' reference to any unreported order or other document included in the Appendix to the Petition for Writ of Certiorari will be cited with a reference to the Appendix with the letter "A." followed by the relevant page number(s). If the document in the Appendix is also included in the appellate court record, the Appendix citation is followed by a citation to the appellate court record as described in note 6, *supra*. The first reference to unreported orders will also include a full citation to the name, case number and date of the order.

The district court denied petitioner's motion to intervene as of right under Fed. R. Civ. P. 24(a)(2) because he failed to prove "that the interests he seeks to assert are not already adequately represented." A.13, R16-611-3-4. As the district court found, petitioner's "principal concern is that the defendants not be allowed to close Partlow and that his daughter be allowed to remain there indefinitely." A.15, R16-611-6. The court held, however, that petitioner's concerns were already subsumed within the litigation, as part of the ongoing dispute between plaintiffs and defendants over the issue of community placement for individuals with mental retardation. A.17-19, R16-611-8-10. The district court found that the issues petitioner desired to raise were already being litigated by the parties in a "detailed, sincere, and vigorously adversarial" manner. A.18, R16-611-9. Finding that petitioner failed to "identify a single issue that would not be litigated or a single proposition that would not be advanced in his absence," the court ruled that petitioner had nothing to add to the existing debate between the parties over the merits of community-based care. A.17, R16-611-8.[8]

After the district court denied petitioner's motion to intervene, the court and the parties moved forward with a 35-day evidentiary hearing to determine whether defendants are in compliance with (1) the United States Constitution, (2) the 1986 Consent Decree and (3) the Americans with Disabilities Act. The parties are awaiting

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[8] The district court also denied petitioner's motion for permissive intervention, noting that allowing "representatives of all residents who have an interest in this litigation -- that is all representatives -- to intervene would render this lawsuit more unmanageable and unnecessarily confusing than it already is." A.19-20, R16-611-10-11.

a decision on the merits, but the district court has issued a preliminary injunction finding one of defendants' facilities unsafe.[9]

At the 1995 evidentiary hearing, the parties presented evidence on all of the substantive issues raised by petitioner's motion to intervene, including testimony or documentary evidence concerning the need for community placement, the method by which individuals with mental retardation are currently placed in community settings in Alabama, the nature and extent of parental opposition to community placement, the manner in which the defendants address parental opposition and whether all individuals with mental retardation can live in the community with appropriate supports. During these proceedings, defendants vigorously defended the pace at which they have developed community placements and transferred individuals with mental retardation to those placements, and the method they employ to respond to parental concerns about and opposition to community-based care.[10] Also, they stated they had no plans to close the Partlow Developmental Center, where Bridget Haas resides, or any other mental retardation facility.[11]

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[9] *Wyatt v. Poundstone*, 892 F. Supp. 1410 (M.D. Ala. 1995), Nos. 95-6637 & 95-6875 (11th Cir. argued Dec. 7, 1995).

[10] Defendants' Response to Plaintiffs' and the United States' Proposed Findings of Fact and Conclusions of Law at 80-85, (M.D. Ala. filed July 12, 1995) (Doc. No. 1127). The citation "Doc. No." refers to pleadings in the district court docket.

[11] Trial Testimony of Catherine Maddox, Director of the Alabama Department of Mental Health and Mental Retardation's Bureau of Facility Services, documented in district court trial transcript at 3990:20-23.

Petitioner appealed the district court's denial of intervention as of right to the Eleventh Circuit Court of Appeals. The case was assigned to a panel that was presided over by the Chief Judge of the Circuit. During oral argument, counsel for petitioner admitted that there was no immediate likelihood that Bridget Haas would be transferred from the Partlow Developmental Center to the community over petitioner's objections.[12] The Eleventh Circuit dismissed petitioner's appeal, finding that there was "no error" in the district court's denial of intervention, and that the district court's factual findings regarding adequate representation were not "clearly erroneous." *Wyatt v. Hanan*, No. 95-6013 at 2, 3 (11th Cir. Jan. 31, 1996), A.2, 4. The Eleventh Circuit also stated that petitioner might seek leave to intervene at a later time if his interests were not adequately represented. A.4 n.2. The Eleventh Circuit's opinion was not reported, and thus is of limited precedential value. *See* 11th Cir. R. 36-2 ("[u]npublished opinions are not considered binding precedent," but may be cited as persuasive authority).

Petitioner requested a rehearing or rehearing *en banc*, asserting that the Eleventh Circuit had used the wrong standard of review and that it had erred in affirming the district court, but these requests were denied. *Wyatt v. Hanan*, No. 95-6013 (11th Cir. Mar. 28, 1996), A.8-9.

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[12] As the Eleventh Circuit noted when it dismissed petitioner's appeal, "we are mindful of the fact that Haas and his daughter have yet to suffer the untoward consequences they fear may result in due time." *Wyatt v. Hanan*, No. 95-6013 (11th Cir. Jan. 31. 1996) at 4 n.2, A.4 n.2.

B. Correction of Misstatement of Law in the Petition

Petitioner asserts that in *California v. Tahoe Regional Planning Agency*, 792 F.2d 779 (9th Cir. 1986), the Ninth Circuit Court of Appeals adopted an "abuse of discretion" standard to review denials of intervention pursuant to Federal Rule of Civil Procedure 24(a)(2). (Petition at 8). This opinion did not adopt an abuse of discretion standard, however; it adopted a *de novo* standard of review for Rule 24(a)(2) decisions. *See id.*, 792 F.2d at 781 ("We review *de novo* a district court's denial of intervention as of right.")

ARGUMENTS FOR DENYING THE WRIT

I.

This Court should deny certiorari because it appears that the Eleventh Circuit Court of Appeals used a *de novo* standard in reviewing petitioner's appeal -- precisely the standard petitioner asserts is appropriate.

As petitioner asserts (Petition at 9), the Eleventh Circuit has long applied a *de novo* standard in reviewing district court decisions that deny motions for intervention as of right under Federal Rule of Civil Procedure 24(a). Although petitioner claims that the Eleventh Circuit departed from a *de novo* standard of review in dismissing petitioner's appeal, the Eleventh Circuit's decision does not state that the court departed from its prior rule in petitioner's case.

In fact, the Eleventh Circuit appears to have utilized a *de novo* analysis in this case. At the beginning of its

opinion, the Eleventh Circuit stated, "We find no error in the court's refusal to allow Haas to intervene as of right." A.2. This language is consistent with prior Eleventh Circuit cases, holding that denial of intervention as a matter of right is reviewed "for error." *Federal Savings and Loan v. Falls Chase Special Taxing District*, 983 F.2d 211, 214, 215 (11th Cir. 1993). Although the appellate court also stated that it could not "say that the district court's finding of fact -- that Haas and his daughter's interests are being adequately protected -- is clearly erroneous," this language is also consistent with prior Eleventh Circuit case law, which states that subsidiary factual findings regarding intervention as of right are "subject to review for clear error." *Meek v. Metropolitan Dade County, Fla.*, 985 F.2d 1471, 1477 (11th Cir. 1993). [13]

Petitioner asserts that a *de novo* standard was the appropriate standard of review in this case (Petition at 13). Since it appears that the Eleventh Circuit did apply a *de novo* standard in reviewing and dismissing petitioner's appeal, this Court should deny certiorari.

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[13] Although petitioner claims that the district court "did not purport to base its decision on the weight of the evidence or any other matter typically associated with a factual finding" (Petition at 11), as noted in Part II *infra*, the district court reviewed a variety of factual matters, including the goals petitioner seeks to accomplish through intervention, the goals of the existing parties, and whether and to what extent the goals of the existing parties correspond with or diverge from petitioner's goals.

II.

This Court should deny certiorari because under either an abuse of discretion analysis or a *de novo* standard of review, the result in petitioner's case would be the same.

Petitioner claims that if the United States Court of Appeals for the Eleventh Circuit had employed a standard of *de novo* review in this case, the court may well have granted petitioner's motion to intervene. However, petitioner's motion for intervention would be appropriately dismissed by the appellate court whether it conducted an abuse of discretion or *de novo* review.

Petitioner's burden of demonstrating inadequate representation, although minimal, *see Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972), is "not so minimal as to write the requirement completely out of the rule." *Bush v. Viterna*, 740 F.2d 350, 355 (5th Cir. 1984). Since the facts and the record in this case demonstrate that defendants represent petitioner's interest in the continuing existence of the institution in which his daughter resides, and that petitioner's interest in adequate care at the Partlow Developmental Center is also represented, the only reasonable conclusion that an appellate court could reach is the same conclusion drawn by the district court: that petitioner "has not identified a single issue that would not be litigated or a single position that would not be advanced in this absence." A.17, R16-611-8. As the district found :

> This is therefore "not a suit in which no existing party has voiced applicant's concerns," *Bush*, 740 F.2d at 357; "this is not a case where the applicant

> has a defense not available to the present defendant," *id.*; "this is not a suit in which it is clear that the applicant will make a more vigorous presentation of arguments than existing parties," *id.*; "this is not a suit in which no party views the applicant's claims favorably," *id.*; "this case is more closely aligned with those cases in which courts have determined that the burden of showing inadequacy of representation has not been met." *Id.*

A.17-18, R16-611-8-9.

Under either an abuse of discretion or *de novo* review, the appellate court would have concluded that the primary interest asserted by petitioner -- the right to ensure that institutional care remains an option for individuals with mental retardation in Alabama -- is adequately represented by the defendants in this litigation. As the district court found, in "detailed, sincere and vigorously adversarial" litigation, A. 18, R-16-611-9, the defendants have contended that the 1986 Consent Decree, the *Wyatt* Standards and the Americans with Disabilities Act support the continued existence of institutions for the care of individuals with mental retardation. Indeed, as the district court stated in its October 1995 class certification decision, "the position of those class members who might oppose named plaintiffs on community placement issues is already being adequately -- indeed, aggressively -- advanced in this litigation by defendants." *Wyatt v. Poundstone* at 12, No. 3195-N (M.D. Ala. Oct. 3, 1995), A.65.

Under either standard of review, the appellate court would have concluded that the existing parties also represent petitioner's subsidiary interest in ensuring that the care provided at the Partlow Developmental Center

is legally adequate. Petitioner claimed to the district court that the care provided at the Partlow is legally adequate.[14] In the appellate court, petitioner appeared to assert that the care provided at Partlow is not adequate.[15] Both claims are well represented by the existing parties. Defendants have long insisted that their facilities meet legally-mandated standards of care. For more than 20 years, plaintiffs have asserted that defendants' facilities are inadequate, and have pursued the interest that defendants provide all class members with minimally adequate care. In fact, the record reflects that the 1995 evidentiary hearing focused on evidence of inadequate institutional care to at least the same extent as on class members' asserted right to receive community-based services.[16]

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[14] At the district court level, petitioner asked that the court to declare that the care provided at Partlow is "legally adequate." R11-131-C2, A. 290.

[15] In petitioner's brief to the Eleventh Circuit, he asserted an interest in ensuring that "defendants must improve care at Partlow to satisfy" the *Wyatt* standards. Appellant's Brief at 19, *Haas v. Wyatt*, No. 95-6013 (11th Cir. filed Sept. 28, 1995).

[16] The Eleventh Circuit panel that heard petitioner's appeal was well aware of the defendants' insistence that its facilities are adequate, and plaintiffs' contention that class members receive sub-standard care, because this panel is also considering defendants' appeal of the district court's preliminary injunction regarding unsafe conditions at one of defendants' facilities, *see* n. 9 and accompanying text, *supra*, and because oral argument regarding the injunction took place immediately before the oral argument in the instant case. In his Statement [of the Case] to this Court, petitioner failed to mention that a dispute regarding the adequacy of care provided by defendants is pending before the Eleventh Circuit. Petitioner noted only the subject matter of appeals that had been consolidated with the appeal of the preliminary injunction. (Petition at 7).

Since petitioner's objectives are shared by the existing parties, an appellate court would properly conclude that petitioner's interests are adequately represented. *Athens Lumber Co., Inc. v. Federal Election Commission*, 690 F.2d 1364, 1366 (11th Cir. 1982); *see also Bush*, 740 F.2d at 355. Such a view is consistent with decisions in other class action mental disability cases, in which courts have denied intervention at the merits stage to purported classes or subclasses asserting interests similar to those asserted by petitioner. *See Halderman v. Pennhurst State School & Hospital*, 612 F.2d 131, 134 (3d Cir 1979); *Lelsz v. Kavanaugh*, 98 F.R.D. 11 (E.D.Tx. 1982), *appeal dismissed on other grounds*, 710 F.2d 1040, 1048 (5th Cir. 1983).

Thus, given the facts of this case and the requirements of Rule 24(a)(2), no matter what the standard of appellate review, an appellate court would be compelled to find that petitioner cannot prove that his interests are inadequately represented by the existing parties, and that therefore, petitioner's motion for intervention should be denied.

III.

Certiorari is inappropriate in this case because there was no "substantial departure from the accepted and usual course of judicial proceedings" below.

Petitioner asserts that this Court should grant certiorari in order to remedy certain alleged irregularities in this litigation. As petitioner admits, however, the district court has already remedied the alleged irregularity about which petitioner most vociferously complains by formally certifying a plaintiff class in this matter, including named class representatives with mental retardation. *Wyatt v.*

Poundstone, No. 3195-N (M.D. Ala. Oct. 3, 1995), A.54; *see also* Petition at 15. Since there is now a formally certified class, and since petitioner expressly declined to be a class representative, A.19 n.16, R16-611-10 n.16; A.65 n.10, it appears that there is little, if anything, this Court can now do to address petitioner's complaints that no class had been formally certified when petitioner sought to intervene. Petitioner's complaints about the lack of a formal class certification order seem even more negligible in light of the fact that all parties involved in this matter, as well as the district court and the former Fifth Circuit Court of Appeals, have, without any apparent confusion, treated this matter as a class action for almost twenty-five years. A. 58-59 (citing, *inter alia*, *Graves v. Walton County Board of Education*, 686 F.2d 1135, 1139-40 (5th Cir. 1982) (Unit B) ("despite the lack of a formal order certifying this case as a class suit, this case was in fact a class action and was specifically described and treated as such by the parties and the trial court ...."); *Lockett v. Board of Education*, 976 F.2d 648, 649 (11th Cir. 1992) (per curiam) (reaffirming *Graves*) (other citations omitted)).

To the extent that petitioner may be asserting that a conflict exists among members of the plaintiff class, that issue is not ripe for this Court's adjudication. As petitioner notes (Petition at 7), the appeal now pending before the Eleventh Circuit includes the question of whether the district court's class certification opinion was in error. Moreover, questions regarding class certification arose during the 1995 district court proceedings, and the district court has explicitly stated that it might, if necessary, take future action to assure adequate representation of class members who disagree with the named plaintiffs. A.64-65. It seems likely that the district court will address class issues in its forthcoming opinion on the merits of the

1995 proceedings, and that these issues will be a subject of a future Eleventh Circuit appeal. Accordingly, a grant of certiorari by this Court to consider class issues would be premature and would short-circuit the proper roles of the district and appellate courts.

CONCLUSION

The writ of certiorari should be denied.

Respectfully Submitted,

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